

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JOSE RAMOS,**

**Plaintiff,**

**9:09-cv-1046  
(GLS/RFT)**

**v.**

**LESTER N. WRIGHT**, M.D., Deputy  
Commissioner, Chief Medical Officer, DOCS;  
**MARYANN GENOVESE**, former medical  
director, Sing Sing Correctional Facility;  
**DOCTOR MILLER**, Hub Medical Director,  
Shawangunk Correctional Facility; **JOSEPH T.  
SMITH**, Superintendent, Shawangunk  
Correctional Facility; **KAY KNOTT**, Deputy  
Supt. of Administration, Shawangunk  
Correctional Facility; **DOE(S)**, Shawangunk  
Correctional Facility,

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

Jose Ramos  
Pro Se  
85-A-5899  
Shawangunk Correctional Facility  
P.O. Box 700  
Wallkill, NY 12589

**FOR THE DEFENDANTS:**

HON. ERIC T. SCHNEIDERMAN  
New York State Attorney General  
The Capitol  
Albany, NY 12224

BRIAN J. O'DONNELL  
Assistant Attorney General

**Gary L. Sharpe**  
**District Court Judge**

**MEMORANDUM-DECISION AND ORDER**

**I. Introduction**

Plaintiff Jose Ramos, an inmate at the Shawangunk Correctional Facility, brings this action pursuant to 42 U.S.C. § 1983, alleging that defendants violated his constitutional rights by denying him adequate medical care for his serious medical needs. (See Compl., Dkt. No. 1.) The defendants filed a motion to dismiss the complaint. (See Dkt. No. 14.) In a Report-Recommendation and Order (R&R) filed January 3, 2011, Magistrate Judge Randolph F. Treece recommended that defendants' motion to dismiss be granted in part and denied in part.<sup>1</sup> (Dkt. No. 16.) Pending are defendants' objections to the R&R. (Dkt. No. 17.) For the reasons that follow, the R&R is adopted in its entirety.

**II. Standard of Review**

Before entering final judgment, this court routinely reviews all report and recommendation orders in cases it has referred to a magistrate judge.

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<sup>1</sup> The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations de novo. *See Almonte v. N.Y. State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at \*6-7 (N.D.N.Y. Jan. 18, 2006). In those cases where no party has filed an objection, or only a vague or general objection has been filed, this court reviews the findings and recommendations of a magistrate judge for clear error. *See id.*

### **III. Discussion**

#### **A. Claims Against Wright, Smith, and Knott**

In the R&R, Judge Treece recommended dismissal of Ramos's claims against defendants Lester N. Wright, Joseph T. Smith, and Kay Knott for lack of personal involvement. (See R&R at 8-11, Dkt. No. 16.) In the absence of any specific objections to this portion of the R&R, the court has reviewed it for clear error and finds none. Accordingly, the court adopts Judge Treece's recommendation that Wright, Smith, and Knott be dismissed from this action.

As Judge Treece points out regarding Knott, Ramos makes no mention of her "[b]eyond identifying Ms. Knott in the 'Parties' Section, [and] there is not a single allegation of fact nor even a mention of her name

throughout the rest of the Complaint.” (See *id.* at 9.) Ramos has clearly failed to establish her personal involvement. As to Wright, Ramos alleges solely that he and his wife wrote letters to Wright. (See *id.*) As Judge Treece points out, this is insufficient to support Wright’s personal involvement. (See *id.*) As to Smith, Ramos’s allegation of personal involvement is limited to the assertion that Smith is the Superintendent of Shawangunk Correctional Facility. (See *id.* at 10.) Again, an insufficient allegation of personal involvement. Therefore, upon review of this portion of the R&R, the court finds no error and adopts Judge Treece’s recommendations that Ramos’s claims against Wright, Smith, and Knott be dismissed.

**B. Claims Against Genovese and Miller**

Defendants object to Judge Treece’s recommendation that their motion to dismiss be denied as to the claims against Maryann Genovese and Doctor Miller. Defendants’ objection lacks merit.

As explained in the R&R, in order to sustain an Eighth Amendment claim for denial of adequate medical care, the plaintiff must show that the charged prison staff behaved with “deliberate indifference to serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Here

defendants concede that Ramos's condition is serious. (See R&R at 12, Dkt. No. 16.) Thus, the motion to dismiss challenges only the notion that Ramos was either denied adequate medical care or treated with deliberate indifference. (See *id.*) As to this issue, Judge Treece determined that dismissal is not warranted at this juncture.

In drawing that conclusion, Judge Treece points to the fact that Ramos received "several clinical laboratory tests ... [that] were rarely, if ever, followed up with a course of actual treatment," (see *id.*), and that Ramos was denied access to a specialist and surgeon, which led to a deterioration in the condition of his back injury, (see *id.* at 13). And as the R&R further points out, and this court emphasizes, without access to Ramos's medical records and "the full extent of the treatment he received, or didn't receive," it is impossible to determine if his cause of action for denial of adequate medical care fails. (*Id.*) For these reasons, the court adopts Judge Treece's recommendation that the motion to dismiss be denied as to the claims against Genovese and Miller.

**C. Defendants' Exhibits**

Additionally, Judge Treece declined to rely on or incorporate into the record two grievance packets submitted in the defendants' motion to

dismiss. Defendants specifically object. (See Objections at 5-6, Dkt. No. 17.) Given these specific objections to this portion of the R&R, Judge Treece's findings will be reviewed de novo.

Judge Treece stated his reasons for declining to rely on or incorporate the grievance packets as follows: (1) it is unclear whether Ramos had access to the grievance packets in their entirety when drafting his complaint, (see R&R at 8, Dkt. No. 16); (2) it is unclear whether Ramos relied upon his own grievances, "let alone the entirety of the grievance packets," in drafting his complaint, (see *id.*); (3) it is unclear whether Ramos's reference to the grievances serves any other function than to indicate that he fully exhausted other remedial options, (see *id.*); and (4) the grievance packets reveal little about Ramos's factual allegations, (see *id.*). Having reviewed this portion of the R&R de novo in light of defendants' objections, the court concurs with Judge Treece and adopts his recommendation as to defendants' exhibits.

**D. Doe Defendants**

Finally, Judge Treece declined to immediately dismiss the Doe defendants from the action, to which the Shawangunk defendants object. However, the court concurs with and adopts Judge Treece's

recommendation that Ramos must identify and timely serve these defendants or they will be dismissed from the action.

#### **IV. Conclusion**

**WHEREFORE**, for the foregoing reasons, it is hereby

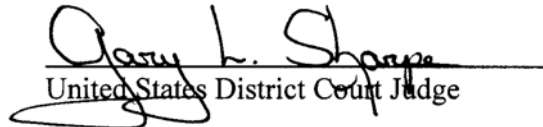
**ORDERED** that Magistrate Judge Treece's Report-Recommendation and Order (Dkt. No. 16) is **ADOPTED**, whereby:

1. Defendants' motion to dismiss is **GRANTED** as to the claims against Wright, Smith, and Knott, and Wright, Smith, and Knott are **DISMISSED** from the action; and
2. Defendants' motion to dismiss is **DENIED** as to the claims against Genovese, Doctor Miller, and Doe(s); and it is further

**ORDERED** that the Clerk provide a copy of this Memorandum-Decision and Order to the parties.

**IT IS SO ORDERED.**

Albany, New York  
June 17, 2011

  
United States District Court Judge